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May 24, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: MM Docket No. 92-265
Ex-Parte Presentation

Dear Mr. Caton:

Pursuant to the provisions of 47 C.F.R. 1.1200 *et seq.*, enclosed please find two copies of correspondence sent on this date to the Chairman and all Commissioners regarding the above referenced proceeding.

Thank you for your attention in this matter.

Very truly yours,



Mark C. Ellison

MCE/dw

Enclosures

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The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: MM Docket No. 92-265
Programming Access and Price Discrimination - Ex-Parte Presentation

Dear Mr. Chairman:

This firm is counsel to Consumer Satellite Systems, Inc. d/b/a National Programming Service ("NPS"), a national packager of satellite television programming for the home satellite television receive only ("HTVRO") market and a party in the above referenced proceeding. By this letter, the Commission is urged to support the Petition for Reconsideration submitted by the National Rural Telecommunications Cooperative in the referenced docket calling for the ability to recover damages and attorneys fees in access and price discrimination proceedings.

In addition to NPS, this firm has been engaged by several other HTVRO packagers (all of whom are multichannel video programming distributors or "MVPDs") to examine the HTVRO marketplace and review the prices the HTVRO packagers must pay for satellite cable programming. If necessary, we intend to initiate complaints at the Commission for price discrimination.

After several months of work on this project, I have reached the following conclusions: (a) despite the passage of the 1992 Cable Act and the implementation of the Commission's rules regarding competitive access to cable programming, extreme discrepancies continue to exist between the rates paid by cable and those paid by HTVRO distributors for many programming services; and (b) absent the threat of damages, attorneys fees, and the retroactive application of Commission relief with respect to program pricing, there is little incentive for deep-pocketed programmers to respond to HTVRO packagers' demands for relief.

The Hon. Reed E. Hundt
May 24, 1994

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There are, of course, exceptions; several programmers have introduced new rate cards which establish parity between cable and HTVRO. However, many of the programming vendors continue to charge HTVRO packagers rates which are two hundred to six hundred percent of the highest cable rate. In some cases, HTVRO packagers are paying more for programming services at wholesale than individual cable subscribers are paying at retail.

On behalf of NPS and other HTVRO MVPDs, this firm has submitted ten day notice letters (pursuant to 47 C.F.R. 76.1003) to several of the programmers and we intend to send such letters to a number of other programmers. If we are not able to reach acceptable settlements with those programmers, we will submit complaints at the Commission. We are attempting to avoid the complaint process by undertaking good faith efforts to negotiate. We fear, however, that we will be running into stone walls fortified by the fact that the programmers have little or no incentive to negotiate. They can simply take on the fight at the Commission and then, if they lose, grant lower rates in a year or two, once the complaint process is completed.

To motivate the programming vendors it is imperative that the Commission permit the award of damages and retroactive rate roll-backs in cases of unjustifiable program price discrimination. We urge the Commission to reconsider 47 C.F.R. 76.1003(s) and clearly establish that an award of damages and attorneys fees is appropriate for violation of the program access and pricing requirements. Only with such "teeth" will the intent of Congress be realized.

Pursuant to the provisions of 47 C.F.R. 1.1200 *et seq.*, two copies of this correspondence have been delivered to the Secretary of the Commission on this date. Thank you for your attention and consideration in this matter.

Sincerely,



Mark C. Ellison, Esq.

cc: The Hon. Andrew C. Barrett
The Hon. James H. Quello
The Hon. Susan Ness
The Hon. Rachelle B. Chong